

## AMATEUR ATHLETIC OFFICIALS

This information sheet was prepared to clarify the common law factors of employment as they apply to amateur athletic officials. An amateur athletic official is an individual who supervises an amateur sporting contest, such as an umpire, referee, judge, scorekeeper, or timekeeper. Depending on the method by which they perform their services and the circumstances of their relationship, these workers may perform services as employees or independent contractors. Historically, they have been treated as independent contractors.

### Who Is an Employee?

An employer-employee relationship exists when a person who hires an individual to perform services has the right to exercise control over the manner and means by which the individual performs those services. Section 4304-1 of Title 22, California Code of Regulations, says that to determine whether one performs services for another as an employee, the most important factor is the right of the principal to control the manner and means of accomplishing a desired result. Whether or not that right is exercised, an employer-employee relationship exists. If it cannot be determined whether the principal has the right to control the manner and means of accomplishing a desired result, the "secondary" elements will be taken into consideration.

### Determination of Worker Status

The California Supreme Court and the California Unemployment Insurance Appeals Board (CUIAB) have consistently held that the right of specific direction and control over the work performed is the controlling factor when determining an employment relationship. *There have been numerous CUIAB cases, Administrative Law Judge cases, court cases, and a California Attorney General's opinion relative to amateur athletic officials. These cases have found that if the principal does not have the right to control and does not have control over an amateur athletic official's decisions during a contest, the official is an independent contractor.* "Principal" is defined as an individual or entity for whom or for which someone performs services. Amateur athletic officials generally have one or more of the following four principals: (1) the school or sponsoring team; (2) the league or entity sponsoring the league; (3) the sports governing body; and (4) the amateur athletic officials association or other similar entity. This does not preclude the existence of other principals. "Control" shall not be established by factors provided for under rules promulgated by third parties or by circumstances not directly related to the

amateur athletic official's duties. One example of such a third-party rule would be a rules-based protest to a league commissioner or an umpire in chief (an individual responsible for resolving such a protest) in a baseball league. Another example would be a municipality's decision to shut down a baseball field to prevent damage to the facility itself rather than to usurp an umpire's discretion as to whether or not the field was playable. If it is not clear whether the amateur athletic official's actions are subject to direct control during a contest, then this factor and the attached list of elements would be used to determine if the amateur athletic officials are employees or independent contractors.

The attached Table of Determination Elements lists 17 elements found in numerous CUIAB cases and Administrative Law Judge (ALJ) cases, which have been formally adopted in Section 4304-10 of Title 22, California Code of Regulations. These secondary elements are used to develop a determination of employment or independence only after it has been determined that the principal may have had the right of control over an amateur athletic official's decisions during a contest.

Along with each element the chart lists evidence that indicates either "employee" or "independent contractor" status. Lastly, each element has been given a weight based on the importance or significance of the element as evaluated by the CUIAB. A grouping of heavily weighted elements indicating employment would normally be considered employment. When the elements appear to be evenly distributed, the law has said the relationship is also employment. If a grouping of heavily weighted elements indicates independence, the individual would be considered an independent contractor for purposes of the California Unemployment Insurance Code.

Specific questions or assistance regarding the employment status of amateur athletic officials may be directed to the Employment Tax Office closest to you, or you may contact our call center toll-free at (888) 745-3886. For TTY (nonverbal) access, call (800) 547-9565.

A formal ruling may also be requested by submitting a form DE 1870 (Determination of Employment Work Status for Purposes of State of California Employment Taxes and Personal Income Tax Withholding) to:

Employment Development Department  
Audit Section  
P.O. Box 826880, MIC 94  
Sacramento, CA 94280-0001

## TABLE OF DETERMINATION ELEMENTS

<u>ELEMENTS</u>	<u>EVIDENCE</u>  EMPLOYEE	<u>OF:</u>  INDEPENDENT CONTRACTOR	<u>WEIGHT</u>
(1) Whether or not the one performing the services is engaged in a separately established occupation or business.	<p>The worker does not operate his or her own business. Work performed is a direct and essential part of the principal's business. The worker does not advertise his or her services to the general public as a separate business. The worker performs services under the principal's trade name. Worker wears uniform with principal's name on it. The worker is paid by principal whether or not customer pays. The principal provides insurance coverage. The worker is prohibited from providing services to others while performing services for principal.</p> <p>The principal is responsible to arrange for a substitute. The worker does not have an entrepreneurial risk of loss.</p> <p>Control and employment is indicated if a worker is prohibited by the principal from working for others.</p>	<p>The worker operates an independent business separate from that of the principal. The worker advertises under own trade name, has a business license where or when required, and has an investment in facilities or equipment. The worker provides his or her own insurance coverage or pays for the cost of coverage under principal's insurance plan. Worker arranges for someone to take his or her place if unable to perform duties.</p> <p>The worker is not prohibited by the principal from providing services for others when performing services for the principal. The worker assumes an entrepreneurial risk of loss (i.e., worker does not receive payment for services from the principal if the customer does not pay.)</p> <p>An amateur athletic official may be independent if he or she has the right to work for several different principals at the same time. This would show the lack of a continuous relationship with one principal and be an indication of independence.</p>	<p>If the worker has established a separate business, distinct from that of the principal, and the work is performed in the furtherance of that separate business, great weight would be given toward independence. If the worker does not have an established separate business, distinct from that of the principal, and the work is performed in the furtherance of the principal's business, great weight would be given towards an employment relationship.</p>

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(2) Custom in the industry and location.	Principals treat their workers as employees.	Workers typically operate their own separately established businesses.	This element by itself is not controlling. This is because each determination must stand on its own facts regarding the principal's right to direct and control. Industry custom merely implies an inference or direction to the determination.
(3) Required level of skill of the worker.	Little skill or experience is required. No particular education is needed.	In order to fulfill his or her work obligation, the worker masters a code or set of rules. In addition, the worker may obtain ongoing information regarding amendments to the code or set of rules and amendments to the techniques of administering the code or set of rules.	Level of skill, by itself, generally does not weigh heavily toward independence. However, a high level of skill will weigh more heavily when combined with other factors such as separate and distinct business. If an amateur athletic official obtains a high level of skill on his or her own, this weighs toward independence; however, if the acquirement of this skill is required by the principal, this is a neutral factor. A low level of skill weighs in favor of employment, since as skill level declines, the worker has less room to exercise the discretion necessary for independence.
(4) Whether the principal or the worker supplies the instrumentalities, tools, and place of work.	The principal provides the worker with the equipment necessary to perform the services.	The worker pays for his or her own equipment.	This element is not controlling but only gives an inference or direction to the determination. If items are provided by the principal, this indicates employment. If items are provided by the worker, this indicates independence. Providing of sports facility is a neutral factor.
(5) Duration of services.	The worker performs services on a continuous basis.	The worker provides services on a sporadic, per-job basis. Services may be on a "per-contest" basis.	This element, by itself, is not controlling. Independent contractors usually perform work on a job basis for shorter, designated periods of time. Employment is usually of open-ended duration. A long series of short-term assignments from a single principal will tend to show continuity and employment. However, where the worker has a separately established business and retains the right to simultaneously accept assignments from other principals, the acceptance of a long series of short-term assignments from a single principal would not indicate employment.

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(6) Method of payment, whether by the time, a piece rate, or the job.	<p>Payment is by time period (such as hour, week, month) or piece rate. Payment is made at regular intervals. Compensation is set by the principal. The principal provides the worker advance payment furnished for services. Benefits are furnished at no cost to the worker.</p> <p>If rate of pay is determined by the principal, this indicates control and employment.</p>	<p>The fees are negotiated per contest. The worker may receive advance payments for services provided they are agreed upon based on the contract between the worker and the principal. The worker pays for his or her own expenses. The principal furnishes no benefits to the worker.</p> <p>If rate of pay is determined by the worker or is negotiated between the worker and the principal, this indicates the principal's lack of control and independence on the part of the worker.</p>	<p>This element, by itself, is not controlling. It is only an indication of the type of relationship. This is because a worker may be paid solely by the contest, but the controls are sufficient to create an employer-employee relationship.</p> <p>This element, by itself, is not controlling, but it is important in that it indicates control or lack of control of the worker by the principal. In situations where the athletic official's compensation is determined by local custom, this factor is neutral.</p>
(7) Whether or not the worker's services are part of the regular business of the principal.	The worker's services are an integral or normal part of the principal's business activities. Activities are central to delivering the services provided by the business.	The worker's services are only supportive of the business activities and/or purpose and are not an integral part of the principal's business activities.	This element is given medium weight. The presumption is that if the worker's services are an integral (regular, normal, central) part of the principal's business, then the principal by business necessity needs to maintain control over the worker's services.
(8) Whether or not the parties believe they are creating the relationship of employer and employee.	Both parties believe the relationship is one of employment.	Both parties agree that the relationship is one of independence.	This element, by itself, is not controlling. The belief of parties only implies the intent of the relationship.
(9) Principal and worker contract.	Agreement between the principal and the worker gives the principal the right to direct and control the manner and means of the work. Agreement contemplates that the worker will perform the services personally.	Agreement forbids principal from directing the worker as to details (manner and means) of the work. Agreement contemplates the worker is an independent contractor.	Terminology used in written agreement is not conclusive of the relationship but is evidence of the relationship intended. Written agreements may not be the same as the actual relationship of the parties. The actual relationship is what is important.

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(10) Termination.	Both the principal and the worker have the right to terminate the relationship at will without prior notice or without cause and without any further contractual liability (during or after the game).	By agreement or practice, the principal is required to pay for work not performed, if the principal unilaterally terminates the relationship, other than for cause. The contract makes the worker liable for damages if the worker fails to complete the terms of the contract.	The right to terminate conveys an inherent power of the principal over the worker. The right to terminate at will, without cause, is strong evidence of employment, whether terminated during or after a game. Termination during a contest may be stronger evidence of employment as this shows clear-cut control, because the amateur athletic official may have been terminated for making a decision that the principal did not agree with. If a worker is not called back to officiate a contest, this is still termination, but not as obvious or as strong an evidence of employment as termination during a game. However, if a worker is not called back to officiate a contest but is still officiating similar contests (such as an official on one school's scratch list who works other scholastic games), the official is not considered terminated.
(11) Required to accept assignments.	Principal requires worker to accept assignments.	Worker is not required to accept assignments. Worker may give principal a list of the dates that he or she is available.	This factor is not controlling but does carry weight. If the worker is required to accept assignments, this is an indicator of employment. If the worker is not required to accept assignments, this indicates independence.
(12) Training.	Training is provided or required by the principal. The principal instructs the worker on details of the job, on the policies, rules or procedures of conduct, and so on.  Instruction may be in a "clinic."	Training is not provided. Attendance at training is not required. Worker is not paid for time at training. Worker pays for training course.	The act of conducting training to give the worker an orientation of the principal's business and products, by itself, is not a strong indication of employment. It shall be considered a neutral factor when an amateur athletic official receives training from the principal which is used solely to disseminate information on rules, rules interpretations, and officiating mechanics promulgated by recognized state, national, and international authorities. However, if by intent or fact the purpose of the training is to convey instructions about specific rules used only by this principal, it implies that the principal has the right to control the services. This would carry great weight.

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(13) Meetings.	Principal conducts meetings and worker's attendance is required or expected. The worker's time is paid for. Meetings may include training.	Attendance at meetings conducted by the principal is not mandatory and nonattendance is viewed without negative consequence. Time at meetings is not paid for.	The act of holding informational meetings, by itself, is not a strong indication of employment. However, if by intent or fact the purpose of the meeting is to convey policies, rules, training, procedures, or instructions, it infers that the workers are not in control of their services and are not independent. This would carry great weight.
(14) Reports.	Principal requires worker to submit reports regarding complaints or problems. Worker may be required to submit reports on player ejections.	The principal does not require the worker to complete any reports.	Reporting requirements are an extension of the factor "supervision" and would be given medium to great weight depending on the purpose and content of the reports (verbal or written). Reports that are used to monitor the worker's performance are considered controls by the principal over the manner and means of the work. Health and safety reports are given no weight.
(15) Dress Code.	The principal requires the worker to wear a specific uniform bearing the name and logo of the principal.	The worker is not required to wear a specific uniform.	This element, by itself, is not controlling and must be looked at with other elements to determine employment. This element will not be indicative of employment where the official wears the uniform, and any specific marking or indicators on the uniform, which are customary for athletic officials in his or her sport, provided that the official is responsible for every aspect of purchasing, maintaining, and the upkeep of said uniform.
(16) Policies, rules, or procedures of conduct.	Policies, rules, and procedures set by the principal as evidenced by written or verbal instructions necessary as to the details (manner and means) or methods to call a contest.	Worker performs his or her services independent of any policies, rules, or procedures of conduct from the principal when calling a contest. Does not include rules from outside entities like the American Softball Association.	The setting of policies, rules, or procedures, and instructions by the principal is an indication of direction and control over the worker's services and carries great weight. In order to indicate control these would have to be specific policies, rules, procedures, and instructions used only by the principal rather than any rule book used by a specific sport, such as the ASA Rule Book used by the American Softball Association.

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(17) Worker can be fined.	If a worker can be fined by the principal, this indicates control and thus employment.	If the principal does not fine the worker it would only indicate independence if it were part of an agreement that the principal could not fine the worker. A sports association may fine a worker and still show evidence of independence where the workers have the right to elect the officers of the association who are responsible for levying fines, where the workers are members of the association, and where the workers have the right to participate in votes as to whether to have fines and to set the policy on the amount of fines.	This element, by itself, is not controlling and must be looked at with other elements to determine employment.